Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF RURAL CELLULAR ASSOCIATION

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July 12, 2010

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SUMMARY

As the Commission has recognized in its National Broadband Plan, broadband is a critical ingredient for improving and enhancing the lives of all Americans. RCA commends the Commission for initiating this proceeding and developing the means necessary to promote the deployment of advanced broadband networks in rural, unserved, and underserved areas throughout the country. Turning the vision of the Broadband Plan into reality for rural America will be a daunting undertaking for the Commission. As it embarks on this path, RCA urges the Commission to place emphasis on several critical policies and objectives highlighted below.

- Reforming the Commission's universal service mechanisms to accomplish ubiquitous broadband deployment must accomplish the statutory principle that services in rural areas should be reasonably comparable—in price and quality—to services available in urban areas. These mechanisms also must promote competition as much as possible.

- A hallmark of the Commission's universal service reform should be the principles of competitively neutral manner. Competitive neutrality is the best means of ensuring that broadband deployment will occur efficiently and that affordable broadband services will be made widely available.

- Competitive neutrality requires fair and reasonable treatment of mobile wireless broadband providers. For example, the Mobility Fund proposed by the Commission should provide support for wireless carriers' operating expenses, the phase-down of existing support should work the same for wireline and wireless carriers, and, if the Commission adopts the proposal to convert Interstate Access Support to the Connect America Fund, it should do so in a

manner that does not impose flash-cut funding reductions that would impair wireless carriers' existing construction plans.

- A cost model is an effective method of targeting funds to rural and high-cost areas that are most in need. The Commission should abandon the use of "actual cost" methodologies for rural telephone companies. The FCC should create support mechanisms that target support to high-cost areas for which all carriers may compete, and that fund infrastructure construction to reach new subscribers.

- The Commission should not pursue reverse auctions as a means for awarding universal service funding. Reverse auctions are riddled with problems, including the fact that they encourage anti-competitive conduct. American tax-payers should not have to fund a monopoly.

- Wireless has become the dominant mode of voice communications, and the new funding mechanisms developed by the Commission should take this into account. The FCC should not fund outmoded technologies. RCA suggests that the FCC should cap the Interstate Common Line Support mechanism so that an incumbent's support rises or falls with its gain or loss of access lines.

- Establishing broadband universalization targets is a key component of the Commission's reform measures. RCA supports an initial target of 4 Mbps (download) and 1 Mbps (upload), because, with an upgrade path every four years, this target will ensure universal access. RCA cautions, however, that the Commission should take into account the availability of necessary equipment for Tier II and Tier III wireless carriers, since equipment availability will play a central role in the efforts of these carriers to meet the Commission's universalization targets.

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COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"), by counsel, hereby submits these comments, pursuant to the Commission's Notice of Inquiry and Notice of Proposed Rulemaking in the above-captioned proceeding.[1] RCA supports the Federal Communications Commission's ("FCC" or "Commission") fundamental objectives, outlined in the National Broadband Plan, to accelerate investment in broadband infrastructure and make broadband services more accessible throughout the United States, and in particular for people living in rural and insular, high-cost areas, tribal lands, and for low-income Americans.

Broadband is a critical prerequisite to improving the lives of all Americans[2] and now is the time to prioritize broadband deployment, especially wireless broadband. But the FCC must not act hastily. As the Commission is well aware, universal service reform is a challenging task. However, if crafted correctly, universal service support mechanisms offer extraordinary

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[1] *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, 2010 WL 1638319, rel. Apr. 21, 2010 ("*NOI* and *NPRM*").

[2] National Broadband Plan ("NBP") at 338.

opportunity to stimulate investment and new technologies, and to promote competitive and efficient delivery of advanced broadband services, for the benefit of consumers in rural and high-cost areas.

I. THE FCC MUST ADVANCE THE CORE USF GOALS IN THE 1996 ACT.

A. USF Reform Must Ensure Reasonably Comparable High-Quality Service in Rural and Urban Areas.

Sufficient and appropriate communications infrastructure is essential to achieving universal access to broadband. In 1996, nearly all citizens living in rural high-cost areas had access to basic telephony services at their homes and businesses, primarily as a result of the Commission's policy of ensuring universal service nationwide. In the Telecommunications Act of 1996 ("1996 Act"),[3] Congress directed the FCC to preserve ***and*** advance universal service by developing new mechanisms to deliver to rural consumers reasonably comparable advanced telecommunications and information services, at reasonably comparable prices.[4]

Congress envisioned the services supported by universal service mechanisms would evolve over time, as telecommunications and information technologies advanced and consumer preferences changed. Section 254 of the 1996 Act provides the FCC with a three-part analysis to determine when a service should be supported.[5] RCA concurs with the FCC that USF reform is

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[3] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[4] *See* 47 U.S.C. §254(b)(3).

[5] Section 254(c) of the Communications Act of 1934 ("Act") provides as follows:

> (1) In general.--Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--

critical to accelerating the construction of new broadband infrastructure in rural and high-cost areas, explaining in the NBP that, "[u]nfortunately, the current regulatory framework will not close the broadband availability gap."

Many RCA carrier members effectively utilize available Universal Service Fund ("USF") support, as intended, to construct high-quality networks that provide vastly improved service that is reasonably comparable to services available in urban areas. That said, small and regional carriers continue to face competitive challenges in rural America. Ensuring rural and regional consumers have access to high-quality, low-cost service and equipment is a difficult task considering the financial, regulatory and legal hurdles in today's economy. The Commission, in the NBP, has taken the first steps toward defining what it means for a rural citizen to have access to broadband services that are reasonably comparable to services in urban areas. We applaud that effort and urge the Commission to continue to keep the 1996 Act's dual goals in mind — to promote competition and universal service — with both goals carrying equal weight in implementation.[6]

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) Alterations and modifications.--The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) Special services.--In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of [Section 254(h).

[6] Congress has established twin objectives in the Act: Sufficient support mechanisms must be maintained to preserve and advance universal service, and competition must be promoted in the telecommunications

B. Reformed Universal Service Mechanisms Must Promote Competition, Especially in Emerging Markets.

The FCC can continue to promote competition and achieve its goal of controlling the growth of USF by targeting support to the areas that most need it and by tying portability of support to the customer.[7] The 1996 Act promoted competition for the benefit of consumers. As the Commission recognized, universal service provisions were no exception.[8] The Commission diligently worked to ensure that universal service mechanisms promoted competition and opened up rural markets that were dominated by subsidized landline carriers.[9] Precedent dictates that "universal service [should] be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent and that all support must be targeted as well as portable among eligible telecommunications carriers."[10] Under a competitively neutral regime, "[regulatory] disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by

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marketplace. "Section[s] 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service." Rural Task Force, *White Paper 5: Competition and Universal Service* (2000) at 8 (accessed at http://www.wutc.wa.gov/rtf). The Commission has acknowledged these twin goals, and has followed the principle that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997) ("*First Report and Order*") (subsequent history omitted).

[7] Despite many references in the NBP to the Commission's *First Report and Order* following the 1996 Act, the key concept absent from the NBP is ***portability***.

[8] *See First Report and Order*, 12 FCC Rcd at 8801-02 ("[A]n explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote 'a pro-competitive, de-regulatory national policy framework.'" (footnote omitted))

[9] *See, e.g., id*. at 8787 ("Over time, it will be necessary to adjust the universal service support system to respond to competitive pressures and state decisions so that the support mechanisms are sustainable, efficient, explicit***, and promote competitive entry***.") (emphasis added).

[10] *Id*. at 8788 (para. 19).

limiting the available quantity of services or restricting the entry of potential service providers."[11]

It is critical to align the needs and interests of consumers, carriers, and government policymakers when developing universal service mechanisms that work within competitive markets. Carriers in a competitive marketplace must provide high-quality service at competitive prices in order to win and retain customers. Consumers want the ability to choose among service providers, and demand access to affordable, high-quality, and technologically advanced services. Government policymakers have an interest in providing an efficient level of support only to carriers that successfully win customers.

The FCC can align all of these desires and interests by first determining an appropriate level of support for a particular area, and distributing it only to carriers that win customers in that area. By doing so, customers are empowered to choose the service provider that best suits their needs. Limiting the amount of support provided to a particular area also furthers the government's interest in controlling fund growth by linking the support to the customer, rather than the carrier. Carriers that lose customers, lose their revenue, and their universal service support as well. This system, which operates today in the competitive ETC ("CETC") world so that CETCs *only* receive support to the extent that they win and retain customers, can work as an efficient driver of consumer benefit, provided the current system is modified to make support

[11] *Id*. at 8802; *see id*. At 8790 ("We adopt this principle and the principles enumerated by Congress in section 254(b) to preserve and advance universal service while promoting the pro-competitive goals of the 1996 Act.")

fully portable, and to oversee program participants to ensure that all requesting customers are able to access service from at least one facilities-based carrier.[12]

RCA agrees that improvements to current mechanisms, determining an efficient level of support and properly targeting it to rural areas, are necessary. But, the Commission must continue to adhere to the underlying principle that universal service mechanisms can and must promote competition in areas where the business case for next generation technology does not exist without USF support. Universal service reform that skews the competitive marketplace will have substantial, costly, and far reaching negative consequences for rural citizens. To achieve its lofty goal of ubiquitous broadband access while promoting competition, the FCC must require portability and target competitively and technologically neutral universal service support to the most needed rural areas.

C. ETCs Should be Permitted to Invest High-Cost Support in Broadband Infrastructure.

The FCC can help to accelerate investment in broadband by permitting eligible carriers to invest its universal service support to construct broadband infrastructure. Section 254 encourages use of universal service support to ensure that rural citizens have access to advanced information services, including broadband. The FCC should immediately permit ETCs to invest their universal service support in broadband network infrastructure in rural areas.

II. UNIVERSAL SERVICE REFORM MUST BE COMPETITIVELY NEUTRAL.

Competitive neutrality is an implicit goal of the 1996 Act, leading to the explicit goals of encouraging competition while preserving and advancing universal service. "Section[s] 254(b)

[12] This is essentially how the current Lifeline program works for *both* incumbent and competitive providers, which are reimbursed for the discounts offered to low-income customers based on the number of low-income customers eligible for Lifeline service that choose the providers.

and 214(e) of the 1996 Act provide the statutory framework for a universal service mechanism that encourages competition while preserving and advancing universal service."[13] The Commission has acknowledged these twin goals, and has long embraced the principle that "universal service mechanisms and rules" should not unfairly advantage one provider over another, nor unfairly favor one technology over another.[14]

The Commission in the *First Report and Order* established only one *core principle* — competitive neutrality — as a means of pursuing this implicit goal and the explicit twin goals established in the Act. The United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") has forcefully and practically interpreted the explicit twin statutory goals, stating that USF funding mechanisms, *in order to comply with the Act*, must not only be sufficient to preserve and advance universal service, but also must be competitively neutral.[15] The Fifth Circuit stressed that:

> The [USF funding] program must treat all market participants equally — for example, *subsidies must be portable* — so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.[16]

Universal service mechanisms should promote efficient markets, minimize unfair competitive advantages, and allow new entrants to offer services to consumers in rural, high-cost

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[13] Rural Task Force, *White Paper 5: Competition and Universal Service* (2000) at 8 (accessed at http://www.wutc.wa.gov/rtf), *cited in* CTIA Comments, Joint Board USF Reform Proceeding, WC Docket No. 05-337, May 31, 2007 ("CTIA Reform Proceeding Comments"), at 5.

[14] *First Report and Order*, 12 FCC Rcd at 8801 (para. 47).

[15] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*").

[16] *Id*. (emphasis added).

areas.[17] Competitive neutrality will inherently promote efficiency, minimize marketplace competitive discrepancies, and foster new competitive entrants to the marketplace, all the while ensuring that the size of the USF is remains in check. Accordingly, the FCC must develop competitively neutral universal service mechanisms.[18]

III. A COST MODEL SHOULD BE CONSIDERED AS A MEANS OF TARGETING AN APPROPRIATE AMOUNT OF SUPPORT TO RURAL AREAS.

RCA heartily supports the NBP's statement that support to rural areas must be more accurately targeted to high-cost areas that need investment the most.[19] As RCA has consistently stated, a well-designed model that targets support to high-cost areas and identifies an amount of support that is portable to all market participants, will preserve and advance universal service, as required by the Act. By using a model to determine support for an area, the Commission will further the principle that "the purpose of universal service is to benefit the customer, not the carrier. 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy."[20] A properly structured cost model that does not stifle competition would provide appropriate investments incentives,

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[17] *First Report and Order*, 12 FCC Rcd at 8802 (emphasis added). Our decisions here are intended to minimize departures from competitive neutrality, ***so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.*** We conclude that competitively neutral rules will ensure that such disparities are minimized ***so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers***.

[18] *See,* Comments of RCA, High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, filed May 8, 2009, at 5 ("Competitive neutrality encourages market entry in rural and high-cost areas, market entry forces incumbents and competitors to operate efficiently in order to attract and retain customers, these efficient operations lower operational costs, and these lower costs, in turn, translate into affordable rates for consumers.")

[19] *See* NBP at 141 (recommending that the Commission's universal service reforms "should target areas that are currently unserved").

[20] *Alenco,* 201 F.3d at 621.

increase competition, and help to control growth of the fund. The NBP evidences a great deal of work in developing a cost model, and RCA encourages the Commission to continue working toward a final product. Additionally, RCA encourages the Commission to revisit portability in conjunction with its consideration of cost models, in order to empower consumers and require carriers to compete for both consumers and support.

IV. SOME RECOMMENDATIONS IN THE NATIONAL BROADBAND PLAN RISK FLASH CUTS THAT THE PLAN PURPORTEDLY SEEKS TO AVOID.

A. The Proposed Mobility Fund Does Not Adequately Support Operating Expenses.

The FCC has not developed a record to understand the extent to which mobile wireless carriers will require ongoing support to continue the operation of cell sites constructed in rural areas. Anecdotally, RCA carrier members are already operating a number of cell sites that would not have been constructed, and could not continue operating profitably, but for the availability of high-cost support.[21] As networks penetrate deeper into rural America, the stand-alone profitability of wireless operations only becomes more challenging. As transitional and future support mechanisms are developed, the reality that mobile wireless networks in many rural areas are going to require support for ongoing operating expenditures must be confronted. The Commission should develop a thorough record on this issue because changes in support mechanisms will have significant consequences for infrastructure investment, and ultimately, service quality in rural areas, likely resulting in the turning down of wireless towers whose initial

[21] *See e.g.*, Letter from David A. LaFuria and Todd B. Lantor to FCC Chairman Genachowski, CC Docket No. 96-45, WT Docket No. 05-337 (dated July 23, 2009) (explaining how Carolina West Wireless, an RCA member, recently canceled plans to build eight cell sites in its licensed service area as a result in USF funding reductions. As a result, 20 communities in western North Carolina served by Carolina West will continue to have limited or no cellular service.).

construction and/or continued operation can only be justified through sufficient universal service support.

B. The Proposed Phase Down for Wireline and Wireless Networks is Unequal.

Wireless carriers make up a majority of the carriers designated as CETCs. In the NBP, the FCC proposes the phase down of support to wireline carriers over a ten-year period, while phasing down wireless support over a five-year period. Any phase out must be competitively and technologically neutral, placing all carriers, wireless and wireline, on equal footing. The timing of the proposed phase outs and the glide paths to new support mechanisms should not disadvantage wireless CETCs. In order to ensure a smooth transition of funding and to promote technological neutrality, there should be a 10-year phase out for both wireless (CETC) and wireline companies.

There is no explanation or record developed why wireless carriers (CETCs) should have a shorter phase down. In fact, the presence of a Mobility Fund, to accelerate investment in new mobile networks, is evidence that relatively immature wireless networks require substantial funding to bring rural network quality up to the standard set in urban areas. Further, evidence that consumers are increasingly cutting the cord supports parity among the wireless and wireline phase downs.[22]

Accelerating the phase down of wireless carriers' support only reduces the ability of carriers to construct new cell sites in remote areas. This seems counter-productive, especially given that broad swaths of rural America still require significant capital investment to be brought

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[22] In the last 6 months of 2009, one of every four households (24.5%) did not have a landline telephone but did have at least one wireless telephone, *citing* the National Health Interview Survey. *See* *Wireless Only Households in the USA Rising* (http://www.cellular-news.com/story/43293.php).

up to par with urban areas.[23] Moreover, any phase down should mirror the likely industry conversion from voice networks to all IP networks. An accelerated phase down that is not synchronized with network deployment may have the unintended consequence of causing voice networks to be prematurely abandoned. The FCC should equalize the phase down of wireless and wireline support to ten years. Further, it must not phase down current support until and the FCC has developed and implemented an adequate replacement support mechanism(s).

C. The Proposal to Eliminate Interstate Access Support Represents a Flash Cut.

RCA is encouraged by Commissioner Clyburn's recent statements that USF reform will allow communities to "make the migration successfully."[24] Major USF reform cannot occur instantaneously. The FCC must ensure a successful transition to prevent disruptions to voice services, as it works to build on the successes of expanding voice access to further nationwide broadband deployment.

In furtherance of Section 254, which directs the FCC to make implicit support explicit, the Commission created Interstate Access Support ("IAS") for non-rural carriers, and made such explicit support available to all competitors on a competitively neutral basis:

> By simultaneously removing implicit subsidies from the interstate access charge system and replacing them with a new interstate access universal service support mechanism that supplies portable support to competitors, this Order allows us to provide more equal footing for competitors in both the local and long-distance markets,

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[23] OBI Technical Paper No. 1, Chapter 1, at 5 ("We calculate the amount of support required to provide 100% coverage to the unserved consistent with the availability target to be $23.5 billion…[T]he $23.5 billion gap is the net shortfall, including initial capital expenditures (capex), ongoing costs and revenue associated with providing service across the life of the asset.").

[24] *See* Written Statement of Commissioner Clyburn to "*Universal Service: Transforming the High-Cost Fund for the Broadband Era*" Hearing before the Senate Commerce Committee (Jun. 24, 2010), at 2.

> while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas.[25]

Today, many CETCs receive support from the IAS fund. The NBP's proposal to convert IAS into the CAF can represent a flash cut for CETCs operating in areas where IAS is a major source of funding. In some states, IAS represents a significant percentage of the total support. For example, IAS represents approximately 87% of all support in Virginia, 40% of all support in West Virginia, 29% of all support in Washington, and 19% of support in New Mexico.[26] For CETCs operating in Virginia, the elimination of IAS would all but shut down new cell site construction in the Commonwealth. Moreover, there is no indication that there will be a replacement fund as IAS is being removed from the system.

Before converting IAS to the CAF, the Commission should carefully consider alternatives that do not amount to flash cuts and inadvertently cause major disruptions to the construction plans that CETCs currently have on file with the FCC and state commissions. Moreover, the phase in of new mechanisms should be coordinated with the phasing out of legacy programs.

V. SUPPORT MECHANISMS MUST BE EFFICIENT AND SUCCESS-BASED.

The Commission has repeatedly stated its intention "to transform universal service mechanisms so that they are both sustainable as competition in local markets develops, and

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[25] *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12964 (2000).

[26] These figures were derived from USAC's FCC Filings Web Page using the first quarter 2010 figures, at spreadsheet HC02.

explicit in a manner that promotes the development of efficient competition across the nation."[27] Notwithstanding this laudable intention, current support mechanisms for rural telephone companies are based on an antiquated "actual cost" methodology that is essentially, "the more you spend, the more you get."[28] RCA urges the Commission to create support mechanism that provides a fixed amount of support targeted to high-cost areas for which all carriers may compete, with support flowing only to those who build facilities and get customers. If support is perceived to be insufficient, or excessive, the amount can be adjusted to reach desired outcomes Because of the inefficiencies under the current system today, much of the approximately $3 billion in high-cost support flowing to wireline networks continues to support ***fixed voice services***, and only approximately $1 billion goes to support ***mobile voice services***. These funds must be repurposed over time into a program that supports ongoing investments in broadband infrastructure.

At some point in the future, all traffic is likely to be transmitted over IP networks or a successor technology. The days of circuit switched telephony are numbered.[29] Accordingly, universal service mechanisms must evolve to support investments in networks of the future but must be careful not to unwittingly cause carriers to abandon existing voice networks while they are still providing great utility to rural consumers.

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[27] *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8086 (para. 20) (1999).

[28] JONATHAN E. NUECHTERLEIN & PHILIP J. WEISER, DIGITAL CROSSROADS 51 (2005) ("[T]raditional rate-of-return regulation tends to give any public utility perverse incentives to 'gold plate' its assets: that is, incentives to spend more than is efficient or necessary simply to increase the rate base on which it earns its profits.").

[29] Indeed, the Commission has initiated a proceeding to examine the possibility of transitioning all traffic to IP networks. *See Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice # 25, GN Docket Nos. 09-47, 09-137, Public Notice, DA 09-2517, rel. Dec. 1, 2009.

Additionally, USF should be "success-based" or, as described above, fully portable and efficiently distributed. Universal service should be tied to the customer, not the carrier, and should shift with the customer if a customer switches carriers. "Success-based" support promotes competition, more efficient carrier operations, and increased subscribership in rural and high-cost areas from downward pressure on rates generated by competitive markets. A success-based support policy inherently eliminates the risk of significant USF growth, one of the FCC's main concerns about the current USF system. Additionally, universal service support mechanisms must be efficiently targeted to areas where support is most needed, on a highly disaggregated basis, to ensure that consumers in rural and high-cost areas have access to services that are comparable to those available in urban areas.

VI. REVERSE AUCTIONS ARE INCONSISTENT WITH THE 1996 ACT.

In keeping with Congressional and FCC goals of encouraging competition while preserving and advancing universal service, RCA urges the FCC not to adopt reverse auctions as a means to distribute USF. Despite clear policy direction from Congress to develop universal service mechanisms that foster and promote competition, the FCC tentatively concludes in the NBP that the federal universal service mechanism should only support one market participant.[30] However, reverse auctions present significant statutory, as well as competitive, problems.

[30] NBP at 145 (recommending that, in connection with establishment of a "Connect America Fund," there should be at most one subsidized provider of broadband service per geographic area).

A. Reverse Auctions Do Not Fit Within the Statutory Scheme for Universal Service.

Reverse auctions are contrary to Sections 214 and 332 of the 1996 Act. By their very nature, auctions that produce a single winner restrict marketplace competition.[31] Establishing a single winner contradicts Section 214 of the Act, which states that the FCC *shall* designate multiple carriers in areas served by non-rural carriers.[32] Moreover, it is inconsistent with the FCC's own interpretation of this Congressional mandate.[33] Further, reverse auctions producing only a single winner would ensure supported services at affordable rates only if the Commission or states actively regulate rates — since competition would be stifled. Yet, price regulation of Commercial Mobile Radio Service ("CMRS") providers is prohibited by Section 332 of the 1996 Act.[34]

B. Reverse Auctions Will Result in an Expensive Regulatory Regime.

Reverse auctions perpetuate a monopoly (or, a duopoly environment if a separate auction is conducted for wireline and wireless technologies) and are contrary to the 1996 Act. Reverse auctions would forestall innovation and technology improvements in equipment design, network

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[31] Assuming, for argument sake, that reverse auctions reflect a working market, the FCC would have to choose the winning bid based on a process that is likely to unwittingly favor certain providers and technologies over others. This outcome is far inferior to a distribution mechanism that puts the end-user customer in charge.

[32] 47 U.S.C. § 214(e)(2); *see also* 47 U.S.C. §§ 254(b)(3), 254(b)(5). Section 214 also states that the FCC *may* designate multiple carriers in areas served by rural carriers

[33] *First Report and Order*, 12 FCC Rcd at 8790 ("***We adopt this principle and the principles enumerated by Congress in section 254(b) to preserve and advance universal service while promoting the pro-competitive goals of the 1996 Act***.") (emphasis added). *See also, Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20160 (1999); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21323, 21326 (1998).

[34] 47 U.S.C. §332(b).

design, and billing practices.[35] A better approach is to encourage competitive entry, which leads to natural competition in pricing and service offerings

In addition to rate regulation, presumably, the Commission also would have to impose obligations similar to its interconnection requirements in Section 251 of the Act[36] to open up these monopoly networks to other carriers who wish to enter without support through resale or Unbundled Network Element ("UNE") platforms and encourage a minimal level of competition.[37] Reverse auctions would likely frustrate the FCC's policy to deviate from UNE platforms. The 1996 Act dictates that universal service mechanisms help to deregulate the marketplace and promote competition for all Americans, not just those living in urban areas. These additional layers of regulation are the ***opposite*** of what the 1996 Act demands.

Auctions that result in a single winner would not promote the most critical universal service goals — availability of reasonably comparable services at reasonably comparable rates in rural areas. Reverse auctions would limit the ability of carriers to compete in many areas and, as a result, rural consumers would be denied the benefits of innovation, choice, and new technologies. Instead, the FCC should reaffirm the existing principle of competitive neutrality by providing fully portable support to all carriers willing to offer the supported services throughout a designated service area, and by capping such support at an appropriate level to provide consumers with comparable choices.

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[35] For example, competition has perpetuated better pricing like the flat-rated nationwide local service offerings from large incumbent LECs.

[36] 47 U.S.C. § 251 (imposing an extensive array of interconnection obligations on incumbent LECs).

[37] That is assuming, of course, that the FCC effectively set UNE rates at an appropriate level to incentivize competitors to enter.

C. Reverse Auctions Encourage Anti-Competitive Conduct That Will Be Extraordinarily Difficult to Combat.

Reverse auctions are inherently anti-competitive.[38] While a reverse auction would bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace. In fact, "the proper inquiry is whether the ***effect*** of the legal requirement, rather than the method imposed, is competitively neutral."[39] Rural Americans will not benefit from a government process that pre-determines a single dominant market participant. American tax-payers should not be forced to fund a monopoly. The Commission should reject options that do not have a competitively neutral effect and skew the marketplace, which lead to anti-competitive results.

RCA encourages the Commission to look closely at the motives of some carriers to participate and win in reverse auctions. A participant may have a financial incentive to win a reverse auction at a price that will not generate a positive return, if the effect is to: (1) provide that carrier with an offsetting benefit of reducing its obligation into the fund; or (2) eliminate support for competitors so as to dominate the market. An auction participant with these objectives seeks only to provide the minimum acceptable level of service in high-cost areas, and to further its status as a dominant service provider. These objectives are unacceptable for a universal service program and could amount to illegal anti-competitive conduct.

A single dominant carrier receiving all of the available universal service support to the exclusion of other competitors will destroy competitive market dynamics. RCA opposes any

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[38] Peter K . Pitsch, *Reforming Universal Service: Competitive Bidding or Consumer Choice* (Cato Inst. Briefing Paper No. 29, May 7, 1997), *available at* http://www.cato.org/pubs/briefs/bp-029.html.

[39] *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15177 (2000) (emphasis in original).

initiative or proposal that would lead to such a result. Funding mechanisms should be designed to promote competitive entry because the best means of replicating the advanced broadband services available in urban areas is to harness the efficiencies and technological innovation produced by competitive markets.

Additionally, such anti-competitive conduct or intent would be very difficult to identify at the auction, and all but impossible to combat in the market, once an auction has concluded. Carriers who would prefer to reduce or eliminate their contributions because their business models focus on urban markets should not be able to frustrate the essential purpose of USF — to provide rural Americans with access to high-quality advanced broadband infrastructure.[40]

D. Single-Winner Reverse Auctions Present Practical Problems.

In addition to the regulatory difficulties described above, reverse auctions create practical issues that will harm rural citizens' ability to access critical basic telephone services. The NBP proposes geographic service areas that are relatively small, far smaller than wireless carrier service areas. It is likely that auction winners using fixed fiber, CDMA, GSM, LTE, and WiMAX technologies will all be scattered and mixed throughout rural America.[41] As a result of this technology mix, consumers in rural areas will travel though dead areas where, for example, their CDMA phones do not work in an area served by fixed fiber. A reverse auction mechanism for either the Mobility Fund or the Connect America Fund ("CAF") will present a checkerboard

[40] To the extent that the Commission intends to use reverse auctions to reduce the size of the high-cost fund, it must be noted that nowhere in the 1996 Act is the Commission given such a mandate. The high-cost fund must be sufficient to achieve Congressional goals and to sustain universal service. Decisions regarding the size of the fund are the province of Congress.

[41] For example, a GSM winner will sit side-by-side with a fiber winner in an adjacent area.

of fixed and mobile platforms for broadband that will inevitably limit rural citizens' ability to communicate and will compromise critical health and public safety applications.

VII. THE NBP'S BROADBAND AVAILABILITY GAP DOES NOT INCLUDE THE COST OF PROVIDING HIGH-QUALITY MOBILE WIRELESS SERVICES TO RURAL CITIZENS.

The NBP does not include an analysis of the cost of delivering high-quality mobile wireless service to rural America. Instead, the Broadband Availability Gap technical paper calculates the cost of providing fixed wireline and fixed wireless broadband to households and businesses.[42] It does not address the cost of building a mobile wireless network that provides service to rural citizens ***where they live, work and travel***.

Although the NBP admits it lacks "comprehensive data" that provides an accurate look at broadband availability,[43] it goes on to conclude, without substantial support, that "government intervention will [not] be necessary to enable a robust mobile broadband ecosystem in most parts of the country."[44] That statement may be accurate if "most parts of the country" refers to those areas currently receiving high-quality service without support. If the FCC is attempting to infer that commercial mobile wireless carriers do not need support to build networks throughout rural areas, then it is demonstrably incorrect.

Wireless carriers invest a significant amount of its universal service support in filling in dead zones between cell sites, or clustering cell sites in and around small rural communities so as to deliver seamless, ubiquitous service. For rural carriers' services to be reasonably comparable

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[42] *See*, The Broadband Availability Gap, OBI Technical Paper No. 1, at http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf .

[43] *See NOI and NPRM*, supra, at para. 12.

[44] NBP at 146.

to services available in urban areas, it is often necessary to increase cell site density within an area that otherwise appears covered on less granular maps. ***These investments are the reason that literally hundreds of rural communities across the country have high-quality mobile wireless service today. Without high-cost support, these communities would not have mobile wireless service, much less mobile broadband.***

The use of universal service support to install low powered cell sites, femtocells and other hardware tools will likely become an increasingly important means of enabling rural citizens to rely on mobile devices as their primary communications tool. If the broadband plan fails to allocate adequate support to mobile platforms, it will shortchange the Administration's goal of delivering the substantial economic development opportunities afforded by mobile broadband. Put simply, without mobile coverage, there is no mobile broadband.

VIII. NEW FUNDING MECHANISMS MUST SUPPORT THE SERVICES CONSUMERS ARE ACTUALLY USING AND NOT INSULATE ANY CLASS OF CARRIERS FROM MARKET FORCES.

New universal service mechanisms must take into account the fact that wireless is now the dominant mode of voice communications. A recent National Health Interview Survey indicates that approximately 25% of Americans have wireless telephone service only.[45] Further, Morgan Stanley research indicates that the total number of mobile Internet users will surpass the total number of desktop Internet users by 2014.[46] As of this date, mobile wireless networks still require substantial additional capital to provide coverage that is reasonably comparable to that which is available in urban areas. Yet, between 1999 and 2009, over $31 billion of universal

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[45] The National Health Interview Survey can be found at http://www.cdc.gov/nchs/nhis.htm.

[46] The Morgan Stanley Internet Trends report can be found at www.morganstanley.com/techresearch.

service support has been invested in ***fixed voice service*** while $6 billion has funded ***mobile voice service***.[47]

Despite RCA members best efforts to build out in rural areas as quickly as possible and to negotiate regional and national roaming agreements with the larger carriers, over 75% of the consumers in states where RCA operates, such as West Virginia and Maine, still experience dead zones or poor call quality while moving around the state. This is a clear indication that work still needs to be done to make service ubiquitous. The FCC must continue to make funding available to accelerate construction of mobile wireless networks and to deliver mobile broadband. Yet, funding to mobile networks has lagged behind compared to funding of wireline networks, even though wireless consumers are contributing in excess of $3 billion per year into the universal service mechanism and wireless carriers receive less than one-third of that amount. Today, where a mobile wireless handset is perhaps the single most valuable safety tool a rural citizen can have, the Commission must shift universal service funds toward mobile voice and mobile broadband, until the job of building high-quality networks in rural areas is finished.

In light of the ongoing disparities between USF funding levels for wireline and wireless carriers, RCA strongly opposes the development of any new mechanism that attempts to achieve "revenue neutrality" for incumbent carriers. Today, revenue neutrality simply means the preservation of a particular class of carriers, often at the expense of other carriers attempting to enter the marketplace with services that consumers prefer. This situation urgently calls for a change in the Commission's policies, given the fact that it makes no sense to maintain inflated

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[47] 2009 Federal-State Joint Board Monitoring Report at Table 3.2, accessed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A5.pdf.

levels of high-cost funding for incumbent LECs even while these carriers continue to lose access lines at accelerating rates.

In addition, universal service mechanisms should not foster additional dependence on access replacement mechanisms. Indeed, the NBP calls for a reduction in intercarrier compensation rates, and directs carriers to first recover their costs from their own end user consumers.[48] The FCC should begin this process now by capping the Interstate Common Line Support ("ICLS") support mechanism. ICLS support should be capped at a per line amount, which permits an incumbent LEC's support to rise or fall with its gain or loss of access lines.

IX. THE PROPOSED 4 MB/1 MB BROADBAND SPEED IS APPROPRIATE, PROVIDED THE COMMISSION TAKES INTO ACCOUNT EQUIPMENT AVAILABILITY FOR RURAL CARRIERS.

RCA fully supports the FCC's ***initial*** universalization target of 4 Mbps of actual download speed and 1 Mbps of actual upload speed. RCA agrees that 4 Mbps down / 1 Mbps up, with an upgrade path every four years, will ensure universal access. As Chairman Genachowski has noted, 4 Mbps is the median speed received by residential consumers today, what consumers will likely use over the near term, and is the highest universalization target of any country.[49]

The incumbent LECs will argue that rural areas deserve the same speeds as urban areas, which the Commission has set at 100 Mbps. RCA whole-heartedly agrees that rural America deserves the same high-quality broadband and technology at the fastest speeds possible. But

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[48] *See* NBP at 148 (proposing gradual increases in subscriber line charges).

[49] *See* Letter from Chairman Genachowski to Chairman Rockefeller, Responses to Post-Hearing Questions, U.S. Senate Committee on Commerce, Science and Transportation, April 14, 2010 Hearing on Reviewing the National Broadband Plan, Response to U.S. Senator Byron Dorgan (dated Jun. 15, 2010), at 22.

great must not be the enemy of good. The speed established for the Commission "100 Squared" initiative (100 million households with 100 Mbps download speeds by 2020) is currently not a realistic deliverable, particularly if one considers the evidence presented in the FCC's technical paper that an incremental increase in the 4 Mbps universalization rate to 6 Mbps down will nearly triple the cost to construct broadband networks in rural America.[50]

The incumbent LECs are using the "100 Squared" initiative, requesting that the FCC set the universalization rate at 100 Mbps down, as an anti-competitive means to freeze out wireless competitors and to continue to receive subsidies for a declining base of customers. While wireless carriers cannot yet offer download speeds of 100 Mbps, they are constantly upgrading their networks in response to consumer demand, providing consumers with the most cost-effective, cost-efficient, future-proofed solution to the digital divide challenge.

While speed is an important issue, equipment availability is equally important when it comes to network and equipment upgrades. In past technology upgrades, to 2G, 2.5G, and 3G, the Nation's largest carriers have often consumed all of the available production from network equipment suppliers. Moreover, Tier II and Tier III carriers have often been forced to delay upgrades until later in the product cycle, because their lower volume requirements mean that they cannot purchase equipment at prices that are competitive with larger carriers. To the extent possible, RCA asks the Commission to take equipment availability into account as it imposes eligibility requirements on smaller carriers qualifying for support.

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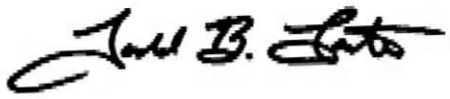
[50] OBI Technical Paper, at 45 ("*Dependence of the Broadband Investment Gap on Speed of Broadband Considered*", Exhibit 3-M).

X. CONCLUSION.

The Commission is at the threshold of realizing the National Broadband Plan's ambitious goal of making advanced broadband services universally available. As the Commission has acknowledged, mobile wireless broadband is poised to play a significant role in accomplishing this goal. RCA respectfully urges the Commission to design support mechanisms that are competitively neutral, and to adopt transition rules that do not favor incumbents or place roadblocks in the path of competitive ETCs. Fair and well-balanced funding mechanisms and transition rules will benefit consumers in rural and high-cost areas by promoting and enhancing the deployment of mobile wireless broadband networks.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



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July 12, 2010